

TERMS AND CONDITIONS

of cloudBrokers IT-Services GmbH

as of 12/2011

I. Preamble

cloudBrokers IT-Services GmbH, hereinafter "cloudBrokers", is a distributor of cloudServices. cloudServices are services where servers are provided which make available services to save data on the Internet, creating for the customer added value for its work, for example by outsourcing data in the form of data backups or the storage of data in the cloud.

II. Scope of Application

These Terms and Conditions are applicable between the Customer and the cloudBroker. They apply exclusively towards entrepreneurs. We expressly do not accept deviating, contrary or supplementary provisions in the terms and conditions of our contracting parties, if those are inconsistent with our Terms and Conditions, and such provisions shall be invalid.

Our Terms and Conditions are always applicable in the form existing on the contract execution date. These Terms and Conditions are also applicable for future transactions with the Customer.

III. Severability

Should any term hereof be or become invalid in whole or in part, this shall not affect the validity of the remaining terms hereof. The invalid or partially invalid term will be replaced by a term that closest reflects the economic success of the invalid term.

IV. Conclusion of Contract

Our quotes are without engagement. The placement of an order by the Customer represents only a non-binding offer to execute a contract. A contract is executed only once we accept the offer in writing or actually provide the service.

The service to be provided by us (such as the storage of data) is specifically defined in price lists or product descriptions. We do not owe any other properties or services. Information provided in leaflets, prospectuses, product descriptions, advertising messages and the like as well as information available on the Internet or other statements, whether verbal or written, shall be relevant and become subject-matter of the contract only if we expressly confirm that they form part of the contract.

All agreements made between the Customer and us to create and perform the contract, including but not limited to agreements on the scope of services, shall be made in writing. Oral agreements besides the order shall be valid only if we have expressly confirmed these in writing.

V. Duty to Cooperate

The Customer undertakes to participate in the execution of an order in an extent necessary without being entitled to any compensation or indemnification. He shall particularly make available all documents, information, employees, premises, hardware and software, data and IT which is/are necessary to execute the order.

If we are in default with a contractually agreed service through no fault of our own, for example because the Customer has breached his obligations to cooperate, the agreed performance period shall be deemed extended by the length of the impediment and by a reasonable start-up time after the impediment has ceased to exist.

The Customer shall prevent any unauthorized access by his employees or third parties. The Customer shall immediately inform us about any suspected abusive use.

VI. Reservation of Title

We expressly reserve title to all devices supplied and other items, pending receipt of all payments from the entire business relationship. In case of the Customer's conduct contrary to the terms of the contract, particularly in case of late payment, we may immediately take back and sell the items.

The fact that we are taking the items back does not operate as a cancellation of the contract, unless we have issued an express written declaration to this effect.

If the Customer is in default with payment, we reserve the right to block access to the saved data without special notification and until further notice. The Customer may not derive any claims for damages or other claims therefrom. The Customer shall hold harmless and indemnify us for and against claims of third parties, including but not limited to damages asserted by the Customer's clients.

The fact that we blocking access to the saved data does not operate as a cancellation of the contract, unless we have issued an express written declaration to this effect.

The Customer shall promptly notify us in writing of any pledge or other third-party interference.

VII. Timing of Service Provision

If we have agreed on a certain point in time at which we shall provide the services to the Customer, that time limit will be observed only if all documents, information, approvals and other duties to cooperate have been provided and fulfilled by the Customer in due time, failing which we are not required to observe the time limit.

VIII. Consequences of Default

We shall not be liable for the Customer's damage, if any, if we are in default with our services, such as the provision of memory, for reasons exclusively within the sphere of our cooperation partners or due to slight negligence. Compliance with our service obligations requires timely and proper compliance with the Customer's obligations.

IX. Force Majeure

In case of inevitable events, labour disputes, operational breakdowns for which we are not responsible, unrest, government action and any events which cannot reasonably be averted, we shall be released from those obligations which have become impossible or unreasonable to fulfill as a result of such event. In this event, we may cancel the contract in whole or in part or postpone the provision of the services throughout the time during which the impediment exists. We shall not be liable in any event for force majeure, unless any damage is covered by insurance anyway. In any event, the Customer shall be notified without delay of the existence of an event of force majeure.

X. Warranty

We warrant that the services we have to provide have the agreed condition on the service provision date. Warranty claims may not be derived from information provided in leaflets, prospectuses, product descriptions, advertising materials and other written or verbal statements, which have not specifically been incorporated into the contract.

The Customer shall promptly notify all defects by written notice, along with a detailed description of the defect or, if impossible, the symptoms of the problem, as well as any information which may be conducive for eliminating the defect. The Customer shall have the obligations to examine all our services and give notice of defects as provided in the Corporate Code. The warranty period is one year. Warranty claims become statute barred after one year.

The parties agree that the state-of-the-art does not permit it to develop programmes that are error-free for all conditions of application.

XI. Liability

We shall be liable only in case of intent or gross negligence. The burden to prove our intent or gross negligence shall be on the Customer. We disclaim any liability for lost profit, damage due to third-party claims, indirect and consequential damage and damage to the recorded data or due to loss of data, and for errors, damage or security gaps in the hardware or software of third manufacturers or cooperation partners. This does not apply in case of personal injuries.

We shall not be liable for any damage caused by intent or negligent handling or incorrect operation by the Customer, for example due to non-observance of our specifications, in case

of hacker attacks, viruses and Trojan horses affecting the Customer's network, unless damage is covered by insurance anyway. Similarly, we shall not be liable for defective cabling, for defective fuses and supply lines, energy supply problems, damage due to overload, lighting, floods or fire, overheating of devices, failures in and to the Internet, third-party attacks and loss and damage of data.

We hereby warrant that we will not access the cloud-saved data and data content without the Customer's prior written consent. In any event, it is not our responsibility to monitor or check whether the saved data contain any illegal content. We expressly disclaim any liability for changes, damage to, deletion or loss of data, unless any such damage is covered by insurance anyway. This is also true for any damage due to viruses, Trojan horses or other harmful computer codes.

We will notify the Customer as soon as possible if we are required to make available to a court or other state authority by virtue of a statutory obligation or in connection with a court case or proceedings before any other state authority any data stored with us.

The Customer himself has sole responsibility for the content of the data saved and for the general conduct in connection with using such data. The Customer may use the services we have provided under the contract exclusively in accordance with the relevant and pertinent national, international, interstate, and supra-national regulations.

In any event, the Customer shall fully hold harmless and indemnify us toward anyone for and against any claims, costs, damages, direct and indirect damage, consequences and claims.

XII. Prices and Terms of Payment

All stated prices are net prices exclusive of statutory value added tax.

The Customer may charge or retain due payments only if we have either acknowledged Customer's claims in writing or if those claims were finally confirmed by a court. Unless otherwise agreed, payments the Customer has already made are non-refundable.

Default interest is charged at the statutory rates applicable to entrepreneurs. All taxes and duties shall be paid by the Customer.

Invoices are due and payable without deduction within 7 days after the invoice date. In case of late payment, we reserve the right to appoint a collection agency. The related costs, including but not limited to dunning and collection charges, shall be borne by the Customer.

If terms for payment are not observed or if we become aware of any circumstances which could adversely affect the Customer's credit standing, all claims will immediately become due and payable. In this event, we may provide outstanding services only against advance payment and cancel the contract after a grace period as well as assert claims for damages. In these events, the Customer shall not be entitled to any damages or compensation for any other damage of whatever nature.

XIII. Data Privacy

The Customer expressly agrees that his order-related data, including but not limited to his name, address, date of birth, e-mail address, fax, phone number, etc. may be processed and used for business purposes in connection with our operations and our business, such as the execution of the order (invoicing etc), mailing information or advertising materials about our products, and for marketing and advertising purposes and for disclosure to third parties.

Customer's order-related data means also the particulars of his customer. The Customer hereby warrants that he has the right to disclose to us his customers' order-related data as described in more detail above and that he has obtained his customers' express consent. The Customer shall hold harmless and indemnify us for and against claims, if any, asserted by his customers.

The Customer's information, including the data of his customers, will be automatically processed and in this context treated pursuant to the terms and conditions and implementing regulations of the Data Privacy Act. We may disclose to third parties the Customer's data for the purpose of checking his credit standing or for the recovery of claims.

The Customer may revoke the consent hereby granted by written notice at any time. It shall be the Customer's responsibility to inform his customers about the possibility to revoke a consent. The Customer shall notify us immediately should any of his customers have revoked their consent. The Customer shall hold harmless and indemnify us also in this respect.

We reserve the right to adjust the information provided in this data privacy statement without prior notice to any changes in legislation or case law.

XIV. Secrecy and Confidentiality

The Customer hereby expressly warrants and guarantees to keep strictly confidential and not to disclose to any third party any technical knowledge, any knowledge and documentation and any other technical and commercial information, including the technical know-how disclosed to the Customer, as well as information about customers and business partners and about third-party software used.

Furthermore, the Customer expressly warrants and guarantees that any information contained in samples, drawings, documents, records, electronic records, data carriers or other storage media delivered to the Customer or to which the Customer has gained access also represent confidential information to which we will retain title. However, this does not imply that we are required to deliver or otherwise procure access for the Customer to any records. The Contractor does not warrant for the correctness or completeness of information disclosed or for their fitness for technical or commercial applications.

Furthermore, the Customer undertakes to assign the above confidentiality obligations to all employees, co-workers and all other persons who participate in the implementation of the

subject-matter of the contract or otherwise become aware of these, and to provide us with written evidence upon our request. This applies also to all employees, co-workers, officers and all agents and self-employed intermediary distributors, employees and contractors with which the Customer works or to whom the above information is disclosed. Notwithstanding the above, the Customer will engage external third parties only upon receipt of our written consent.

The Customer shall promptly and unsolicitedly return to us upon our first demand all samples, documents, electronic records, data carriers and other storage media which we have made available to him. The Customer waives any retention right by virtue of any title whatsoever in connection with this return obligation. The Customer further undertakes not to duplicate, copy, save electronically or otherwise record the delivered documents and, should such copies necessarily have been made, to destroy and delete these copies immediately and fully and to submit written evidence to us upon our request.

The Customer undertakes to take adequate and reasonable precautions to prevent the unauthorized use, disclosure, publication or dissemination of confidential information. Those obligations are applicable also to affiliated companies, and all parties undertake to impose upon them those obligations.

The confidentiality obligation shall not apply to any experience, technical knowledge and know-how in respect of which the Customer has provided us with written evidence that the same

- a. is or will become known, i.e. is or will become public domain without the Customer's participation or fault; or
- b. was already known to the Customer; or
- c. was lawfully made known by third parties without any qualification as to secrecy or use.

The Customer undertakes to pay to us for each single objective breach of these confidentiality obligations a liquidated penalty of €15,000, which may not be reduced by court order.

This shall not affect our right to assert further damages and other claims. Any penalty paid will not be applied towards the Customer's further claims for damages from a breach of this Agreement.

In case of a breach of this Agreement, the Customer shall have to prove that he has not committed any breach hereof.

XV. Property Rights

We retain unrestricted title and copyrights in respect of all documents, including but not limited to quotes, cost estimates, invoices, drawings, plans, drafts, advertising materials, information brochures and other documents provided to the Customer.

These may be made available to third parties, reproduced, processed, distributed or otherwise made public only with our prior express written consent. All entitlements and rights to our software, to our services, work results, the technical know-how and related business secrets, including but not limited to copyrights, rights to inventions and other industrial property rights shall be due to us or the relevant licensors. This shall include in particular rights to any work created by us or our contractors or subcontractors on the basis of the specifications or with the participation of the Customer. We or the relevant licensors are entitled to all license rights not specifically granted to the Customer in writing.

All documents shall promptly be returned to us upon our request or if the order is not placed.

XVI. Final Provisions

Place of performance for all services and payments shall be Klagenfurt.

This Agreement shall be governed by and construed in accordance with Austrian law to the exclusion of the conflict of law rules. The CISG provisions shall not be applicable.

Jurisdiction for all disputes arising directly or indirectly from the contracts and these Terms and Conditions shall lie with the court of the city of Klagenfurt having subject-matter jurisdiction.